

Notice of Allowability

Application No.

09/980,682

Applicant(s)

AYRE ET AL.

Examiner

Carl H. Layno 10/12/04

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Paper No. 08092004.
2. ☒ The allowed claim(s) is/are 1-32, 34-69 and 73-92.
3. ☒ The drawings filed on 09 August 2004 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

DETAILED ACTION

1. Acknowledgment is made of applicant's amendment which was received by the Office on August 9, 2004.

2. Claim 33 is canceled. Claims 70-72 and 93-96 are withdrawn. Claims 1-32, 34-69, and 73-92 are active.

Terminal Disclaimer

3. Acknowledgment is made of applicant's Terminal Disclaimer, which was received by the Office on August 9, 2004. This document has been approved and made of record in the file.

Drawings

4. The formal corrected drawings were received on August 9, 2004. These drawings are approved by the Examiner. Consequently, the Examiner is withdrawing the drawing objection which was made against the claim in the last Office action.

Claim Objections

5. Upon further review of applicant's amended claims, originally submitted on October 23, 2001, the Examiner is withdrawing the 37 CFR 1.126 objection and 37 CFR 1.75(c) objections which were made against claims 47, 59, 63, and 82-85 in the last Office action. The Examiner

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improperly objected to these claims based upon the claims in their earlier PCT modified numbering format, which the applicant corrected in the claim submission of October 23, 2001.

Claim Rejections - 35 USC § 112

6. In view of applicant's modifications to claims 79 and 81, the Examiner is withdrawing the 35 U.S.C 112 rejection which was made against these claims in the last Office action.

Double Patenting

7. In view of applicant's submission of a Terminal Disclaimer on August 9, 2004 (see paragraph 3 *supra*) and approval by the Office, the Examiner is withdrawing the obviousness-type double patenting rejection based upon U.S. Patent No. 6,250,880, which was applied to claims 1-8, 11-16, 18-22, and 25 in the last Office action.

Claim Rejections - 35 USC § 102

8. Upon further reconsideration of applicant's arguments and amendments to the claims, the Examiner is withdrawing the 35 U.S.C 102(d) rejection of WO 99/12587, which was made against claims 1-27 in the last Office action.

9. Upon further reconsideration of applicant's arguments and amendments to the claims, the Examiner is withdrawing the 35 U.S.C 102(b) rejection of Hubbard et al '525 which was made against claims 28, 73, 74, 77, and 78 in the last Office action.

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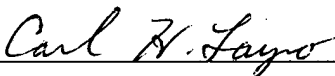
Allowable Subject Matter

10. Claims 1-32, 34-69, and 73-92 are allowed.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (703) 308-3694. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message (carl.layno@uspto.gov) may be left if desired.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (703) 308-5181. All faxed correspondence should be sent to the Office's main Fax number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (703) 305-7520.



CARL LAYNO
PRIMARY EXAMINER

CHL
10/12/2004